

3 UNITED STATES BANKRUPTCY COURT

3 | SOUTHERN DISTRICT OF NEW YORK

4 Case No. 12-12020-mq

-----x

**6 | In the Matter of:**

7

**8 | RESIDENTIAL CAPITAL, LLC, et al.,**

9

## 10 | Debtors.

11

13

14 United States Bankruptcy Court

15 One Bowling Green

16 New York, New York

17

18 April 30, 2013

19 || 10:05 AM

20

21 | BEFORE:

22 HON. MARTIN GLENN

23 U.S. BANKRUPTCY JUDGE

24

25

1  
2 (CC: Doc #3374, 3375) STATUS CONFERENCE re Debtors' Motion for  
3 Entry of an Order to Permit the Debtors to Continue Using Cash  
4 Collateral

5

6 (CC: Doc #3189) ADJ. HEARING re First Application for Interim  
7 Professional Compensation (First Interim Application of Hudson  
8 Cook, LLP as Special Counsel to the Debtors for Compensation  
9 and Reimbursement of Expenses Incurred for the Period 5/15/2012  
10 through 12/31/2012) for Hudson Cook LLP, Special Counsel;  
11 period: 5/15/2012 to 12/31/2012; fee: \$1,206,481.50;  
12 expenses: \$15,463.07

13

14 (CC: Doc #1227) ADJOURNED HEARING Regarding Scheduled  
15 Creditor's Motion for the Clarification/Enforcement of the  
16 Automatic Stay Against The Debtors, Co-Creditor Deutsche Bank  
17 Americas and Counsel

18

19 (CC: Doc #2935) MOTION to Extend Time for Julio Solano to File  
20 Proof of Claim

21

22 HEARING Regarding Letter of David and Leslie Kinworthy  
23 Requesting Relief from the Automatic Stay

24

25 (CC: Doc #2604) MOTION for Relief from Stay

1  
2 (CC: Doc #3238) MOTION to File a Late Proof of Claim Filed by  
3 Wenig Firm  
4

5 ADJ. HEARING re Cure Objections  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18

19 Transcribed by: Lisa Bar-Leib  
20 eScribers, LLC  
21 700 West 192nd Street, Suite #607  
22 New York, NY 10040  
23 (973)406-2250  
24 operations@escribers.net  
25

1

2 A P P E A R A N C E S :

3 MORRISON & FOERSTER LLP

4 Attorneys for Debtors

5 1290 Avenue of the Americas

6 New York, NY 10104

7

8 BY: TODD M. GOREN, ESQ.

9 JAMES A. NEWTON, ESQ.

10 SAMANTHA MARTIN, ESQ.

11 STEFAN W. ENGELHARDT, ESQ.

12 NORMAN S. ROSENBAUM, ESQ.

13

14

15 KRAMER LEVIN NAFTALIS & FRANKEL LLP

16 Attorneys for the Official Committee of Unsecured

17 Creditors

18 1177 Avenue of the Americas

19 New York, NY 10036

20

21 BY: STEPHEN D. ZIDE, ESQ.

22 ELISE S. FREJKA, ESQ.

23

24

25

8 BY: BRIAN S. MASUMOTO, ESQ.

10  
11       HUDSON COOK, LLP  
12               Special Counsel to the Debtors  
13               6 Hutton Centre Drive  
14               Suite 840  
15               Santa Ana, CA 92707

17 BY: DANA CLARKE, ESO. (TELEPHONICALLY)

20 KELLEY DRYE & WARREN LLP  
21 101 Park Avenue  
22 New York, NY 10178

24 | BY: CATHERINE L. THOMPSON, ESQ.

1  
2 KIRKLAND & ELLIS LLP

3 Attorneys for Ally Financial and Ally Bank  
4 601 Lexington Avenue  
5 New York, NY 10022

6  
7 BY: CRAIG A. BRUENS, ESQ.  
8 ANTHONY GROSSI, ESQ.

9  
10  
11 WHITE & CASE LLP

12 Attorneys for the Ad Hoc Group of Junior Secured  
13 Noteholders  
14 1155 Avenue of the Americas  
15 New York, NY 10036

16  
17 BY: J. CHRISTOPHER SHORE, ESQ.  
18 HARRISON DENMAN, ESQ.

19  
20  
21  
22  
23  
24  
25

1  
2 CLEARY GOTTLIEB STEEN & HAMILTON LLP  
3 Attorneys for Wilmington Trust  
4 One Liberty Plaza  
5 New York, NY 10006

6  
7 BY: JEREMY R. OPOLSKY, ESQ.

8  
9  
10 SILVERMANACAMPORA LLP  
11 Special Counsel to the Official Committee of Unsecured  
12 Creditors  
13 100 Jericho Quadrangle  
14 Suite 300  
15 Jericho, NY 11753

16  
17 BY: JUSTIN S. KRELL, ESQ.

18

19

20

21

22

23

24

25

1  
2 WENIG SALTIEL LLP

3 Attorneys for MED&G Group LP  
4 26 Court Street  
5 Suite 1200  
6 New York, NY 11242

7  
8 BY: WILLIAM E. BANEY, ESQ.

9  
10  
11 LAW OFFICES OF JOHN T. DZIAŁO  
12 Attorneys for David and Lesley Kinworthy  
13 200 West Santa Ana Blvd.  
14 Suite 990  
15 Santa Ana, CA 92701

16  
17 BY: JOHN T. DZIAŁO, ESQ. (TELEPHONICALLY)

18  
19  
20 LAW OFFICES OF RICHARD SAX  
21 Attorney for Julio Solano  
22 448 Sebastopol Avenue  
23 Santa Rosa, CA 95401

24  
25 BY: RICHARD SAX, ESQ. (TELEPHONICALLY)

1  
2 MUNGER, TOLLES & OLSON, LLP

3 Attorneys for Berkshire Hathaway Inc.

4 355 South Grand Ave.

5 35th Floor

6 Los Angeles, CA 90071

7

8 BY: THOMAS B. WALPER, ESQ. (TELEPHONICALLY)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

RESIDENTIAL CAPITAL, LLC, et al.

10

1 P R O C E E D I N G S

2 THE COURT: All right. Please be seated. We're here  
3 in Residential Capital, number 12-12020. Mr. Goren?

4 MR. GOREN: Thank you, Your Honor. Todd Goren,  
5 Morrison & Foerster, on behalf of the debtors. The first  
6 eleven and a half pages of the agenda or so were all adjourned  
7 to a later hearing date. So the first item going forward on  
8 the agenda is on page 12. And that is the status conference on  
9 the debtors' motion for a nonconsensual use of cash collateral.

10 THE COURT: Yeah.

11 MR. GOREN: The debtors filed that motion in early  
12 April seeking nonconsensual use of cash collateral solely to  
13 pay for those costs that the debtors believe are necessary to  
14 preserve and monetize the lenders' remaining collateral.

15 One objection has been filed to date by UMB Bank,  
16 which is trustee for the junior secured bonds, in which they  
17 sought payment of the trustee's fees and expenses. We've been  
18 able to resolve that objection by agreeing to pay UMB's only  
19 fees. We will include that in the order. We didn't agree to  
20 pay any UMB's professional fees but we will pay the trustee's  
21 fees.

22 Citi also filed a response clarifying that they still  
23 believe they're owed a default rate interest because we made a  
24 statement in the motion that we paid Citi off in full. That's  
25 not really an issue for this specific hearing. They just

RESIDENTIAL CAPITAL, LLC, et al.

11

1 wanted to get that out there on the record. That will be dealt  
2 with at some point in the future as necessary.

3 The motion was originally scheduled to be heard today  
4 but in order to accommodate discovery requests by the junior  
5 secured bonds, we consensually agreed to move it out to the  
6 14th of May. Your Honor entered an order on the -- I believe  
7 it was Friday with the scheduling order and the extension of  
8 cash collateral to that time.

9 Absent a consensual resolution, my understanding is  
10 that the junior secured bonds will object to the motion. My  
11 understanding of their position is that they will argue that  
12 because of the debtors' prior 506(c) waiver in the previous  
13 cash collateral order and the substantial unencumbered cash  
14 held by the debtors that we will -- are required to use that  
15 cash to monetize and preserve their collateral for the purposes  
16 we were seeking to use it in the motion rather than using their  
17 cash collateral for that purpose.

18 We're continuing to negotiate with them. I'm hopeful  
19 we'll be able to reach a consensual resolution but, if not, the  
20 parties are proceeding.

21 THE COURT: Anybody want to be heard for the junior  
22 secured noteholders?

23 MR. SHORE: Good morning, Your Honor. Chris Shore  
24 from White & Case on behalf of the ad hoc group of junior  
25 secured notes. We are proceeding, as Mr. Goren said, in both a

RESIDENTIAL CAPITAL, LLC, et al.

12

1 consensual and nonconsensual path. The FAs have been talking  
2 back and forth to try to come up with an agreed upon number  
3 that everybody believes is reasonable for the monetization of  
4 remaining collateral that is not cash yet. We're hopeful we  
5 can get there.

6 To the extent we can't get there, we served document  
7 requests and a deposition -- or deposition notices on the  
8 debtors. They provided us some documents. We're trying to  
9 figure out whether the production is complete at this point.  
10 We had scheduled two depositions. One is going to be completed  
11 this week. One has been adjourned. It's in the DA due to a  
12 witness availability. We're trying to figure out what's going  
13 to happen with that, whether they're going to provide us a  
14 different witness or what not. If we have to come back to the  
15 Court, we'll come back to the Court. But hopefully, we can  
16 work through that.

17 We've also served discovery on the committee. They  
18 have taken the position that they're not going to respond at  
19 this point. We had a meet and confer. We're going to try to  
20 do that this afternoon again. If there are any issues with  
21 that, we'll come back to the Court but hopefully there won't be  
22 any.

23 So we're just proceeding on a path towards consensus.  
24 If we can't get there then we'll file an objection and we'll be  
25 before the Court.

RESIDENTIAL CAPITAL, LLC, et al.

13

1 THE COURT: Okay. Thank you. Anybody else want to be  
2 heard? Committee want to be heard on this? Mr. Zide?

3 MR. ZIDE: Stephen Zide from Kramer Levin on behalf of  
4 the committee. The committee's view is that this motion should  
5 be largely noncontroversial. Ninety-five percent of these  
6 assets of the non-cash assets of the debtors' estates are  
7 encumbered by the AFI revolver and the LOC. That's putting  
8 aside everything challenged. These assets need to be  
9 liquidated and the debtors' proposed use of cash collateral is  
10 limited in purpose only to preserving and maximizing the value  
11 of these assets.

12 The UCC is largely supportive of the relief although  
13 we do have some issues with the proposed order and we intend to  
14 articulate those when we file our papers on the objection  
15 deadline.

16 As Mr. Shore noted, we've also been served with  
17 discovery. We don't think discovery of the committee is  
18 appropriate. We have a meet and confer this afternoon. And if  
19 there are issues that develop with that, we will come back to  
20 the Court.

21 THE COURT: Okay. My only concern is I don't want to  
22 get caught short. If there's going to be a contested hearing,  
23 I want to know. Do we have any dates between now and May 14th,  
24 Mr. Goren?

25 MR. GOREN: Your Honor, we have the May 7th hearing

RESIDENTIAL CAPITAL, LLC, et al.

14

1 date on exclusivity and the UCC's STN motion. The objections  
2 are due on the 6th.

3 THE COURT: Okay.

4 MR. GOREN: So I'm hopeful by that time we'll have a  
5 pretty good sense of whether we're proceeding. And if we think  
6 we're going to need an evidentiary hearing such that we  
7 couldn't use May 14th then we would have to push it out. So  
8 we'll aim to try to let you know at the hearing on the 7th --

9 THE COURT: Okay.

10 MR. GOREN: -- where things stand.

11 THE COURT: Well, let's discuss it on the 7th and see  
12 where we are. Okay? Thanks very much.

13 MR. GOREN: Thank you, Your Honor. I believe the next  
14 item on the agenda is the interim fee application for Hudson  
15 Cook.

16 THE COURT: Sure.

17 MR. GOREN: And I think someone from Hudson Cook is on  
18 the phone.

19 THE COURT: All right.

20 MR. CLARKE: Yes. Dana Clarke from Hudson Cook.

21 THE COURT: Yes. Go ahead.

22 MR. CLARKE: Right. So I believe that Michael  
23 Driscoll of the U.S. trustee's office resolved the objections  
24 to the interim fee application. And so the resolution for a  
25 portion of the expenses and a resolution of a portion of the

RESIDENTIAL CAPITAL, LLC, et al.

15

1 objected fees -- and Michael Driscoll has, I believe, the final  
2 numbers on how they resolved that.

3 THE COURT: Mr. Masumoto from the U.S. trustee's  
4 office is here. I'll let him speak to it. So what we're  
5 talking about is the first interim fee application. And it  
6 covers the period May 15th, 2012 through December 31, 2012. Go  
7 ahead, Mr. Masumoto.

8 MR. MASUMOTO: Thank you, Your Honor. Your Honor,  
9 that's correct. We did reach a settlement. And the figures  
10 are, with respect to the fees, there was a reduction of 2,766  
11 dollars. And with respect to expenses, there was a reduction  
12 of \$320.97.

13 We did reach an agreement with Hudson Cook that in  
14 future applications they will arrange their time records in  
15 project categories as opposed to the chronological order in  
16 their first interim.

17 THE COURT: Anybody else wish to be heard with respect  
18 to this issue? I'm just checking my notes to see whether I  
19 have separate issues to raise.

20 (Pause)

21 THE COURT: All right. I'm going to go ahead and  
22 approve the Hudson Cook first interim fee application with the  
23 adjustments agreed upon with the Office of the United States  
24 Trustee.

25 MR. MASUMOTO: Thank you, Your Honor.

RESIDENTIAL CAPITAL, LLC, et al.

16

1 THE COURT: Thank you very much, Mr. Masumoto. Thank  
2 you very much, counsel.

3 MR. CLARKE: Thank you.

4 UNIDENTIFIED SPEAKER: Your Honor, may we be excused?

5 THE COURT: Yeah, certainly. Anybody else who wants  
6 to be excused certainly can at this point.

7 MR. NEWTON: Your Honor, James Newton, Morrison &  
8 Foerster, on behalf of the debtors. The next item on the  
9 agenda is the motion of Shane Haffey for clarification of the  
10 automatic stay. This is at docket number 1227.

11 I don't know that I heard Mr. Haffey's counsel on the  
12 phone but it's their motion so I'll turn it over to them if  
13 they're on the phone.

14 THE COURT: All right. Is anyone on the phone for Mr.  
15 Haffey? All right. No appearance. Just bear with me a  
16 second, Mr. Newton.

17 Go ahead, Mr. Newton, because, as I understand it, the  
18 debtors agreed to a partial lifting of the stay to permit  
19 appeals to go forward. Why don't you go ahead and explain?

20 MR. NEWTON: Sure, Your Honor. You know, we've  
21 actually given, or suggested, to Mr. Haffey a couple of  
22 options. As we set forth in our opposition, there are six  
23 actions related to this property.

24 THE COURT: Yeah. There's no shortage of actions.

25 MR. NEWTON: Four of them do not involve debtors and

RESIDENTIAL CAPITAL, LLC, et al.

17

1 therefore we don't believe that the --

2 THE COURT: Right.

3 MR. NEWTON: -- stay has any implication. The  
4 remaining two involved an action by Mr. Haffey directly against  
5 debtors. And that action for 2 is the GMAC -- the Haffey GMAC  
6 action we believe would be stayed. In addition, the  
7 foreclosure action that's pending with respect to this property  
8 was brought in the name of Deutsche Bank but there were cross-  
9 claims against debtors. And so, those cross-claims, as well,  
10 we believe will be stayed.

11 THE COURT: But the Haffey GMAC action -- the appeal  
12 is pending in the Sixth Circuit, correct?

13 MR. NEWTON: Correct.

14 THE COURT: And also with what you refer to as the  
15 foreclosure action, there's an appeal pending in the Sixth  
16 Circuit with respect to that.

17 MR. NEWTON: Correct. In fact, all of -- the only  
18 thing that's remaining is appeals in the Sixth Circuit.

19 THE COURT: Okay. Mr. Haffey's lost everything and  
20 there are appeals in the Sixth Circuit.

21 MR. NEWTON: That's correct, Your Honor.

22 THE COURT: Okay. And the debtor is willing to agree  
23 to lift the stay for the purposes of allowing the appeals to be  
24 resolved.

25 MR. NEWTON: Correct.

RESIDENTIAL CAPITAL, LLC, et al.

18

1 THE COURT: I will profess not to fully understand  
2 what relief Mr. Haffey was seeking. In any event, I have  
3 reviewed the papers and the Court will grant the motion in  
4 part, deny the motion in part, permit the two appeals in which  
5 any of the debtors are parties -- appeals pending in the Sixth  
6 Circuit to proceed. So if you would prepare a form of order to  
7 accomplish that, I would appreciate it.

8 MR. NEWTON: All right.

9 THE COURT: Okay?

10 MR. NEWTON: Thank you, Your Honor.

11 THE COURT: Thank you very much, Mr. Newton.

12 MR. NEWTON: I'll turn the podium over to Samantha  
13 Martin.

14 THE COURT: Sure.

15 MS. MARTIN: Good morning, Your Honor. The next item  
16 on the agenda --

17 THE COURT: You have to make your appearance.

18 MS. MARTIN: Oh, sorry. Samantha Martin from Morrison  
19 & Foerster on behalf of the debtors.

20 The next item on the agenda is the motion for stay  
21 relief filed by Mr. and Mrs. Kinworthy. This is docket number  
22 2660. I believe their counsel, Mr. Dzialo, is on the phone.

23 I would just like to note, Your Honor, that the  
24 parties have been negotiating a settlement of the state action  
25 and we're coming close, I believe, to reaching a settlement.

RESIDENTIAL CAPITAL, LLC, et al.

19

1 And otherwise, as you've seen in our papers, the debtors do not  
2 object to limited stay relief solely for the purposes of  
3 permitting the Kinworthys to pursue their claims for monetary  
4 relief in the state court action so that they can liquidate  
5 their claims in the case that we're --

6 THE COURT: All right. The case -- the state court  
7 case is close to trial, is that right?

8 MS. MARTIN: Yes, Your Honor.

9 THE COURT: Okay. All right. I'll hear from the  
10 Kinworthys' counsel.

11 MR. DZIALO: Yes, Your Honor. This is John Dzialo on  
12 behalf of the plaintiffs.

13 THE COURT: Just say your last name again.

14 MR. DZIALO: Dzialo, spelled D-Z-I-A-L-O.

15 THE COURT: Okay. Go ahead.

16 MR. DZIALO: The plaintiffs in this action are just  
17 wishing to get a final figure on this so we can submit a claim  
18 in the bankruptcy. We are close to a settlement but I think by  
19 a partial lifting of the stay allowing this to proceed to trial  
20 should be the impetus that we need to get it finally settled.

21 THE COURT: When is the trial scheduled for?

22 MR. DZIALO: We don't have a date at the present time,  
23 Your Honor, because all of the case management conferences that  
24 we've appeared at, the Court just kicks this back because of  
25 the bankruptcy stay.

RESIDENTIAL CAPITAL, LLC, et al.

20

1 THE COURT: Okay. So this is in Riverside County  
2 Superior Court, is that correct?

3 MS. MARTIN: Yes.

4 MR. DZIALO: That is correct.

5 THE COURT: All right. So I take it then you and the  
6 debtors' counsel are in agreement on the form of order that  
7 should be entered to lift the stay to permit the action to  
8 proceed if necessary, hopefully not necessary, but if necessary  
9 to fix the amount of your claim, is that correct?

10 MR. DZIALO: That is correct, Your Honor.

11 THE COURT: That's fine. I'll grant the motion to  
12 that extent. Have you worked out a form of order with counsel?

13 MS. MARTIN: We submitted one with our response. So  
14 if Mr. Dzialo has no issues with it then --

15 THE COURT: Mr. Dzialo, are you satisfied with the  
16 form of order that was submitted with the debtors' response?

17 MR. DZIALO: Yes, Your Honor, I am.

18 THE COURT: Okay. All right. Then that'll be  
19 entered. Thank you very much.

20 MS. MARTIN: Thank you.

21 MR. DZIALO: Thank you.

22 THE COURT: All right.

23 MS. MARTIN: And I believe with that, that was our  
24 last matter for the -- oh. There's one more. Sorry.  
25 Apologies. Mr. Rosenbaum.

RESIDENTIAL CAPITAL, LLC, et al.

21

1 MR. ROSENBAUM: Good morning, Your Honor. Norm  
2 Rosenbaum for the debtors -- Morrison & Foerster.

3 Your Honor, the next matter on the agenda is the  
4 motion for permission to extend the deadline for Julio Solano  
5 to file a proof of claim. It's docket number 2935. I believe  
6 Mr. Sax, counsel for Mr. Solano, has made a telephonic  
7 appearance.

8 Your Honor, I just want to advise you that this matter  
9 has been adjourned. Both the motion to file a late proof of  
10 claim and the underlying motion for relief from the stay have  
11 been adjourned several times. We reached out on several  
12 occasions to see if a consensual resolution could be reached  
13 for Mr. Solano in this matter for several weeks. And after  
14 several attempts, last night, we finally saw some e-mails from  
15 Mr. Sax suggesting that he would be amenable to engaging in  
16 discussions to see if there was a resolution for this. We  
17 would be prepared to do so provided Mr. Sax responds to any  
18 offers we make in a very timely basis with authority from his  
19 client and that all the matters currently pending before the  
20 Court including the motion for relief, the motion to file the  
21 late proof of claim and the underlying -- and the adversary  
22 that was commenced on behalf of Mr. Solano will be stayed  
23 pending those negotiations. We would agree to adjourn this  
24 matter to June 12th.

25 THE COURT: All right. Mr. Sax, you want to be heard?

RESIDENTIAL CAPITAL, LLC, et al.

22

1 MR. SAX: Thank you, Your Honor. I would like to  
2 adjourn those matters to discuss these possibilities with  
3 counsel. There have been some events in Mr. Solano's life just  
4 in the last few days that changes our perspective about this  
5 matter. So --

6 THE COURT: All right. I'm going to adjourn the  
7 matters until June 12th. It's very important, Mr. Sax, that  
8 you communicate promptly with Mr. Rosenbaum or his colleagues  
9 and see whether you can reach a resolution to this.

10 As I understand it, your state court action against  
11 GMAC Mortgage was filed on June 7th, 2011. I think I followed  
12 the saga of the Solano's attempt to pay the amount that was due  
13 and checks returned, et cetera. I won't go through that whole  
14 narrative. And I understand that, as you know, the bar date in  
15 this case was November 9th, 2012. You filed the late proof of  
16 claim on January 10th, 2013. So I understand the basic  
17 background.

18 We'll adjourn this, as I say, till June 12th. You  
19 ought to really try your best to see if you can reach a  
20 resolution before then. Okay?

21 MR. SAX: We will, Your Honor. Is it possible this  
22 could be held on June 5th as I am in a jury trial on June 12th?

23 THE COURT: No. The problem, Mr. Sax -- and I  
24 appreciate that. What time do you start trial?

25 MR. SAX: It would be 11:30 your time. So --

RESIDENTIAL CAPITAL, LLC, et al.

23

1 THE COURT: Well, we can -- we'll put you on first on  
2 the calendar. You can participate by telephone. The problem  
3 is I do omnibus hearing days in --

4 MR. SAX: No, no, no. That's fine.

5 THE COURT: And so we'll take you first. You can do  
6 it by phone. You can do it from the phone at the courthouse or  
7 your office whichever is more convenient.

8 MR. SAX: Your Honor, that will be fine.

9 THE COURT: Okay. Thank you very much, Mr. Sax.

10 MR. ROSENBAUM: Your Honor, just one other --

11 THE COURT: Go ahead, Mr. Rosenbaum.

12 MR. ROSENBAUM: -- clarifying point. The Solano  
13 adversary proceeding is subject to the adversary proceeding  
14 procedures.

15 THE COURT: Right.

16 MR. ROSENBAUM: And we'd just like to put those in  
17 abeyance.

18 THE COURT: All right. The Court agrees to hold in  
19 abeyance the case management procedures as applied to the  
20 Solano adversary proceeding till we can -- we'll revisit that  
21 on June 12th. Okay?

22 MR. ROSENBAUM: Thank you, Your Honor.

23 THE COURT: Thank you very much.

24 MR. SAX: Thank you, Your Honor.

25 THE COURT: Thank you very much, Mr. Sax. Go ahead,

RESIDENTIAL CAPITAL, LLC, et al.

24

1 Mr. Rosenbaum.

2 MR. ROSENBAUM: Your Honor, the next matter on is  
3 number 8. It's at page 22 of the agenda.

4 THE COURT: Just give me a chance to flip through it  
5 again. Okay. Go ahead.

6 MR. ROSENBAUM: This is the motion for order  
7 permitting MED&G Group LP to file a proof of claim. It's  
8 docket number 3238.

9 THE COURT: Yes.

10 MR. ROSENBAUM: I will cede the podium to counsel for  
11 MED&G.

12 THE COURT: All right.

13 MR. BANEY: Good morning, Your Honor. William Baney  
14 of Wenig Saltiel for the movant. Your Honor, Rule 9006(b)(1)  
15 as pointed out in both movant's papers and the objection by the  
16 debtors is, at bottom, an equitable one. The underlying case,  
17 as you may --

18 THE COURT: Your problem is that the Circuit has set a  
19 very high bar in Chapter 11 cases for the Court to permit late  
20 claims.

21 MR. BANEY: Correct, Your Honor. Movants urge the  
22 Court to follow *In re Grand Union Company*, which is a Delaware  
23 circuit court, which stated that when debtors are aware that  
24 movant is represented by counsel throughout pre-petition and  
25 upwards into filing a petition, that counsel should be served.

RESIDENTIAL CAPITAL, LLC, et al.

25

1 In this case, the objection by the debtors did not address the  
2 issue that counsel is not served in the underlying case in  
3 California. All of the service that was objected to -- well,  
4 we brought it up in our moving papers that counsel for the  
5 movant in the underlying case was not served. And it's our  
6 position that counsel should have been served and therefore  
7 there was no adequate notice.

8 THE COURT: Were your clients aware -- were your  
9 clients or any of their counsel aware of the ResCap bankruptcy  
10 before the bar date?

11 MR. BANEY: Yes, Your Honor. They were aware. And  
12 also with talking with the underlying motion -- or the  
13 underlying actions' counsel, they did receive a notice of  
14 pendency or a notice of this case being initiated. And they  
15 also received a notice that there would be a bar date. But  
16 they never received anything stating what the bar date was.  
17 The notice that they received said hold off on filing a proof  
18 of claim until further notice and no further notice was given.

19 THE COURT: What notice did they receive telling them  
20 to hold off --

21 MR. BANEY: I --

22 THE COURT: Wait. Let me finish my question.

23 MR. BANEY: Sorry.

24 THE COURT: Don't interrupt.

25 MR. BANEY: Sorry.

RESIDENTIAL CAPITAL, LLC, et al.

26

1 THE COURT: What notice did they receive telling them  
2 to hold off on filing a proof of claim?

3 MR. BANEY: Your Honor, I don't have that document. I  
4 believe it may have been --

5 THE COURT: This was a notice from the debtor telling  
6 somebody not to file a proof of claim? I can't believe it.

7 MR. BANEY: Well, I'm not positive of the wording.  
8 This is just from --

9 THE COURT: I mean, maybe their counsel --

10 MR. BANEY: -- conversations with the underlying  
11 case's counsel.

12 THE COURT: I mean, look, I want to be clear about  
13 this. Are you representing that the debtors' counsel advised  
14 your client not to file a proof of claim?

15 MR. BANEY: No, Your Honor. I'm not making that  
16 representation. I'm saying what I heard from -- what the  
17 impression was on the underlying case's counsel --

18 THE COURT: I really don't want to know about --

19 THE COURT: -- not saying that debtor --

20 THE COURT: I'm really not interested in what  
21 impressions the debtors' counsel in the underlying case may  
22 have had. If what you're telling me is that through specific  
23 words, anybody representing the debtors in the underlying case  
24 or in this case advised your client's counsel that they should  
25 hold off on filing a proof of claim, I want to know that. But

RESIDENTIAL CAPITAL, LLC, et al.

27

1 if the counsel in the case came to an erroneous impression that  
2 your client should hold off -- I mean, frankly, I hope their  
3 malpractice insurance is paid up.

4 MR. BANEY: Your Honor, I don't think that there was  
5 any affirmative representation by debtors that -- not to file.  
6 I think what happened was there was a pre-bar date order notice  
7 given to counsel in the underlying case but there was never  
8 anything affirmatively stating what the bar date was.

9 THE COURT: You know, but once -- just bear with me a  
10 second.

11 (Pause)

12 THE COURT: Are you familiar with the Second Circuit's  
13 decision in *In re Medaglia*, 52 F.3d 451 --

14 MR. BANEY: No, Your Honor.

15 THE COURT: -- (2nd Cir. 1995)?

16 MR. BANEY: No, Your Honor.

17 THE COURT: Because the Second Circuit in *Medaglia*  
18 held that actual knowledge of a bankruptcy proceeding is  
19 adequate substitute for a formal notice of the bar date even  
20 where the creditor was not scheduled by the debtor.

21 So the arguments you raise for -- and the Second  
22 Circuit has made clear the Pioneer factors created an extremely  
23 high bar to a late proof of claim.

24 MR. BANEY: I mean, we --

25 THE COURT: In the circum --

RESIDENTIAL CAPITAL, LLC, et al.

28

1 MR. BANEY: -- understand that.

2 THE COURT: Just let me finish this thought. I'm  
3 sorry. You thought I was done. I understand that.

4 In the circumstance where you acknowledge that your  
5 client and its counsel in the state court knew of the  
6 bankruptcy case, it's a particularly difficult case to get the  
7 Court to somehow apply equitable principles.

8 The other thing -- and this is what I've -- in reading  
9 the papers, it's not as if your client and affiliates of your  
10 client weren't served. The claims agent's affidavit of service  
11 show multiple service of the bar date notice. And I know your  
12 client takes the position it didn't receive it. I could  
13 understand it if -- I won't say I understand it. The issue  
14 would get more complicated -- more difficult for me if there  
15 was one single notice and maybe there was an argument it wasn't  
16 delivered and we'd get into an evidentiary issue. And there  
17 certainly is the mailbox presumption that applies in the Second  
18 Circuit. So again, the affidavit of service that it was mailed  
19 creates the presumption that it was received in order to  
20 overcome the presumption, you've got a burden to overcome.  
21 Maybe you could get close to doing it if there was just one bar  
22 date notice that was mailed. Here, there were bar date notices  
23 mailed to, what, I don't know, MED & Base Group LP at 2900  
24 Mendocino Avenue, Suite 101, Santa Rosa, California; Praxis  
25 Capital, 2801 T Street, Sacramento 95816. There were multip --

1 it's obvious -- it's in the debtors' papers about the multiple  
2 mailings. How is it I'm to -- how do you overcome the mailbox  
3 rule here when there are so many notices that were mailed and  
4 nothing was done and what you're telling me is your client's  
5 counsel in California had the "impression" that they could hold  
6 off filing a proof of claim? All right? That's what I'm  
7 really struggling with.

8 MR. BANEY: Right. And, Your Honor, we're not denying  
9 that service was made. We can't affirmatively say that we did  
10 receive it because, talking to our client, there was no record  
11 of the bar date notice from any of the places. That being  
12 said, it's a really -- like you said, it's a very tough  
13 presumption to overcome that service was sufficient.

14 If I may harp back to the Grand Union case, in that  
15 case, the judge felt that if it's something that's mailed to  
16 someone who doesn't have adequate knowledge that it should be  
17 served on counsel. And here, I understand --

18 THE COURT: But your counsel -- are you telling me  
19 your counsel didn't -- well, go ahead. I'm sorry. I  
20 interrupted you.

21 MR. BANEY: No. My point is just that our argument  
22 with the -- I believe it's the T Street where we said it may  
23 have been served. We didn't receive it. And that office has  
24 very little communi -- not very little but their own inner  
25 workings to where they determine if the stuff should go on.

RESIDENTIAL CAPITAL, LLC, et al.

30

1 And these people are acquisitions only. They don't deal with  
2 any litigation. So the fact that they may have received --

3 THE COURT: What about Mendocino Avenue?

4 MR. BANEY: The Mendocino Avenue -- the movant moved  
5 from that place over a year ago. All of the companies moved to  
6 the 333 --

7 THE COURT: Could I -- let me ask you this. Did your  
8 client -- did counsel file a notice of appearance in this case?

9 MR. BANEY: No.

10 THE COURT: All right. They moved from that address  
11 when?

12 MR. BANEY: Over a year ago, sometime in 2012.

13 THE COURT: And was the mail forwarded?

14 MR. BANEY: I can't answer that for sure, Your Honor.  
15 And that being said, mail forwarding only lasts so long so -- a  
16 forwarding address probably would be helpful.

17 THE COURT: All right. Let me hear from the --  
18 anything else you want to add?

19 MR. BANEY: No. Can I reserve the right to a  
20 rebuttal?

21 THE COURT: Yes.

22 MR. BANEY: Thank you.

23 THE COURT: Certainly. Let me hear from debtors'  
24 counsel. Mr. Rosenbaum?

25 MR. ROSENBAUM: Norm Rosenbaum, Morrison & Foerster,

1 for the debtors.

2 Your Honor, we believe there's more than sufficient  
3 undisputed evidence that the bar date notice was mailed on at  
4 least three valid addresses. I would add that one of them, the  
5 333 Mendocino Ave., Suite 110, Santa Rosa, California, which  
6 movant, in their own papers, admit is the main address, a bar  
7 date notice was served on an entity, Pinnacle Equity Group, at  
8 that address. We believe that's an affiliate. Don't have  
9 evidence to put into the record on that but we understand that  
10 to be an affiliate.

11 Your Honor, we don't believe that the movant has  
12 demonstrated excusable neglect here under Pioneer and its  
13 progeny. Its their burden and they haven't met it. And as  
14 Your Honor noted, the bar date notices were deemed received.  
15 We'd cited to Alexander's and similar cases in our papers.

16 Your Honor, I would just note one thing. Movant is  
17 not entirely without remedy here. We are prepared -- and  
18 there's also a motion for relief from the stay on for the next  
19 hearing date. We would be prepared to stipulate to their  
20 equitable relief not their monetary relief. So they're not  
21 without their ability --

22 THE COURT: So they --

23 MR. ROSENBAUM: -- to protect themselves --

24 THE COURT: They bought a --

25 MR. ROSENBAUM: -- in the underlying action.

RESIDENTIAL CAPITAL, LLC, et al.

32

1 THE COURT: -- property in foreclosure. The former  
2 owner of the property has brought an action to quiet title and  
3 set aside the sale, correct?

4 MR. ROSENBAUM: That's correct, Your Honor.

5 THE COURT: And what's the status of that, do you  
6 know?

7 MR. BANEY: I can --

8 MR. ROSENBAUM: I'll defer to counsel --

9 THE COURT: Okay.

10 MR. ROSENBAUM: -- but I believe that matter is on for  
11 trial in the next few weeks. There is a mandatory mediation in  
12 about a week, a week and a half.

13 THE COURT: Okay.

14 MR. ROSENBAUM: But if that's incorrect --

15 MR. BANEY: William Baney, Wenig Saltiel, for the  
16 movant.

17 Yeah. There's a -- I think trial scheduled for May  
18 30th to go forward. The movant has cross-complaints for  
19 equitable relief to quiet title. And the underlying plaintiffs  
20 have an action to set aside the trustee's deed. And movant's  
21 four causes of action, two of them are equitable for set  
22 aside -- or quiet title. And then the other is the monetary  
23 relief in the event that the deed is set aside.

24 Also, just to point out something that counsel  
25 stated --

RESIDENTIAL CAPITAL, LLC, et al.

33

1 THE COURT: What do they say the defect on the sale  
2 was?

3 MR. BANEY: I'm sorry, Your Honor?

4 THE COURT: Do you know? What do the plaintiffs in  
5 the underlying case say the defect in the sale was?

6 MR. ROSENBAUM: The allegations in the complaint are  
7 that the plaintiffs attempted to tender the arrears and that  
8 was unaccepted. I think that's the really gravamen of their  
9 complaint.

10 THE COURT: Okay. All right. The Court's going to  
11 rule.

12 Pending before the Court is the motion for order  
13 permitting MED&G Group LP to file a late proof of claim. It's  
14 ECF docket number 3238 and it's supported by the affidavit of  
15 Brian Burke. The debtors filed an objection to the motion and  
16 that's at ECF 3508.

17 The Court denies the motion for an order permitting  
18 MED&G to file a late proof of claim. MED&G Group LP purchased  
19 the property located at 3735 Coffey Lane, Santa Rosa,  
20 California from the debtors on or about September 13, 2010.  
21 They purchased the premises for \$244,144.84 which was the  
22 amount of the unpaid debt outstanding from the underlying  
23 mortgage. MED&G recorded the trustee's deed upon sale which  
24 displays MED&G's address as P.O. Box 5844 Santa Rosa,  
25 California 95402. See the Burke affidavit, paragraph 4. And

RESIDENTIAL CAPITAL, LLC, et al.

34

1 the trustee's deed is attached as Exhibit A to the motion.

2 On August 29th, 2012, this Court entered its order  
3 establishing a deadline for filing proofs of claim and  
4 approving the form and manner of notice thereof. That's at ECF  
5 1309. It established November 9th, 2012 as the general claims  
6 bar date. The Court subsequently entered an order extending  
7 deadline for filing proofs of claim. That's at ECF 2093 and  
8 extended the bar date to November 16th, 2012.

9 In connection with the action that's pending in  
10 Superior Court in the county of Sonoma, the plaintiffs in that  
11 case sought relief from this Court, relief from the automatic  
12 stay, and the motion was settled by stipulation allowing the  
13 Inoues to proceed to trial on August 17th -- the stipulation  
14 was approved on August 17th, 2012. It's at ECF 1206.

15 MED&G asserted that it filed a motion for relief from  
16 stay on November 27th, 2012. That's at ECF docket 2274. They  
17 said they did so without knowledge of the bar date. And they  
18 did so to permit the action to proceed to trial in the Inoue  
19 action. The motion for relief seeks relief from the automatic  
20 stay to pursue claims including monetary damages against GMAC  
21 Mortgage.

22 The present motion was filed on March 18th, 2013.

23 The affidavit of service with respect to the bar date  
24 notice sets forth the notice was sent to, among others, MED&G  
25 Group LP, 3104 O Street, #109, Sacramento, California 95816;

1 MED & Base Group LP, 2900 Mendocino Avenue, Suite 101, Santa  
2 Rosa, California; and Praxis Capital, 2801 T Street,  
3 Sacramento, California.

4 MED&G complains that the notice was not served upon  
5 its counsel in the California action even though they say  
6 debtors were well aware that MED&G was represented by counsel  
7 in the case.

8 In cases where creditors have failed to file claims  
9 before the bar date despite having notice, Bankruptcy Rule  
10 9006(b)(1) gives the court the discretion to enlarge the time  
11 to file claims where the failure to act was the result of  
12 excusable neglect. See *In re Lehman Brothers Holdings Inc.*,  
13 433 B.R. 113 at 119 (Bankr. S.D.N.Y. 2010). The Supreme Court  
14 has interpreted excusable neglect to be a flexible standard,  
15 one that includes "inadvertence, mistake or carelessness as  
16 well as by intervening circumstances beyond the party's  
17 control." I'm quoting from the Lehman decision -- Judge Peck's  
18 Lehman decision: "However, the determination is, at bottom, an  
19 equitable one that must take into account all relevant  
20 circumstances surrounding the party's omission." See *Pioneer*;  
21 that's 507 U.S. 380 at page 395 (1993).

22 The Pioneer court established four factors to assist  
23 bankruptcy courts in evaluating excusable neglect: (1)the  
24 danger of prejudice to the debtor; (2)the length of the delay  
25 and its potential impact on judicial proceedings; (3)the reason

RESIDENTIAL CAPITAL, LLC, et al.

36

1 for the delay including whether it was within the reasonable  
2 control of the movant; and (4)whether the movant acted in good  
3 faith. See *Pioneer*, 507 U.S. at 395.

4 "The Second Circuit" -- this is a quote from *Lehman*:  
5 "The Second Circuit strictly observes bar dates and has adopted  
6 what has been characterized as a hard line in applying the  
7 *Pioneer* test." Meaning, that this Court should focus its  
8 analysis "primarily on the reason for the delay and  
9 specifically whether the delay was in the reasonable control of  
10 the movant". See *Lehman*, 433 B.R. 119-20.

11 The Second Circuit has noted that "The equities will  
12 rarely, if ever, favor a party who fails to follow the clear  
13 dictates of a court rule" and that "[w]here the rule is  
14 entirely clear, we continue to expect that a party claiming  
15 excusable neglect will, in the ordinary course, lose under the  
16 *Pioneer* test." See *In re BHS&B Holdings LLC*, 453 B.R. 153 at  
17 163 (Bankr. S.D.N.Y. 2010). Instead, "[o]nly in unusual  
18 circumstances where ignorance of the rules or mistakes  
19 construing the rules constitute excusable neglect". That's  
20 *BHS&B* at page 168.

21 Additionally, the Second Circuit has held in a case  
22 that I referred to earlier, *In re Medaglia*, 52 F.3d 451 at 455  
23 (2nd Cir. 1995), that actual knowledge of a bankruptcy  
24 proceeding is an adequate substitute for formal notice of the  
25 bar date even where the creditor was not scheduled by the

1 debtor. Here, it's acknowledged that the creditor was well  
2 aware of the bankruptcy proceeding. Counsel has referred to  
3 "the impression" of MED&G's state court counsel that they  
4 didn't have to file a proof of claim. To me, that establishes  
5 knowledge that, one, you do have to file proofs of claim in  
6 bankruptcy cases and they certainly had not pointed to  
7 anything, any representation, statement, writing by the debtor  
8 that would excuse MED&G from filing a timely proof of claim.

9 Under the circumstances, the Court concludes that the  
10 moving party has failed to establish cause as required under  
11 the Pioneer test and its progeny for permission to file a late  
12 claim.

13 With respect to the lift stay, which is not on for  
14 today, Mr. Rosenbaum, when is that on for?

15 MR. ROSENBAUM: Your Honor, it's on for May 14th  
16 but --

17 THE COURT: What I would encourage you to do -- what  
18 you've indicated is the debtor doesn't object to lifting the  
19 stay to permit the matter to go forward in respect to the  
20 equitable relief. I would urge you to see if you can reach a  
21 stipulation with counsel for MED&G, submit it to chambers -- if  
22 you can agree on it, submit it to chambers and I'll approve it  
23 if it's consistent with what has happened in other similar  
24 kinds of proceedings that'll make it unnecessary to go forward  
25 with the motion to lift the stay.

RESIDENTIAL CAPITAL, LLC, et al.

38

1 MR. ROSENBAUM: Your Honor, Mr. Newton just informed  
2 me we actually did stipulate to that on the --

3 THE COURT: Okay. And did I approve it?

4 MR. ROSENBAUM: Yes, you did, Your Honor.

5 THE COURT: There's so much paper that comes through.  
6 I apologize if I can't keep --

7 MR. ROSENBAUM: I apologize for not raising it  
8 earlier.

9 THE COURT: Okay. All right.

10 MR. ROSENBAUM: But we've already stipulated to that.

11 THE COURT: So that's resolved then.

12 MR. ROSENBAUM: Yes, Your Honor.

13 THE COURT: Okay. So that's going to be the Court's  
14 ruling. Mr. Rosenbaum, please submit an order that for the  
15 reasons stated by the Court, the motion to file a late claim is  
16 denied.

17 MR. ROSENBAUM: Thank you, Your Honor. Will do so.

18 THE COURT: Thank you.

19 MR. BANEY: Thank you, Your Honor.

20 MR. ROSENBAUM: I'm looking around but I think that  
21 concludes the docket for this morning.

22 THE COURT: All right. Anybody else have anything  
23 they want to raise today? All right. We're adjourned. Thank  
24 you very much.

25 MR. ROSENBAUM: Thank you, Your Honor.

RESIDENTIAL CAPITAL, LLC, et al.

39

1 (Whereupon these proceedings were concluded at 10:47 AM)  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1

2 I N D E X

3

4 R U L I N G S

5 DESCRIPTION	PAGE	LINE
6 Hudson Cook's first interim fee application	15	22
7 subject to adjustments agreed upon with the		
8 Office of the United States Trustee		
9 Motion of Shane Haffey for enforcement of the	18	3
10 automatic stay against the debtors granted in		
11 part and denied in part to permit two appeals		
12 pending in Sixth Circuit to proceed		
13 Motion for stay relief filed by Mr. and Mrs.	20	19
14 Kinworthy granted		
15 For reasons stated on the record by the	38	16
16 Court, motion of MED&G Group LP to file a		
17 Late proof of claim denied		

18

19

20

21

22

23

24

25

1

2 C E R T I F I C A T I O N

3

4 I, Lisa Bar-Leib, certify that the foregoing transcript is a  
5 true and accurate record of the proceedings.

6

*Lisa Bar-Leib*

7

8

9

10 LISA BAR-LEIB (CET\*\*D 486)

11 AAERT Certified Electronic Transcriber

12

13 eScribers

14 700 West 192nd Street, Suite #607

15 New York, NY 10040

16

17 Date: May 1, 2013

18

19

20

21

22

23

24

25